

Village of Scarsdale



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September 29, 2011

**Office of the Secretary
Federal Communication Commission
9300 East Hampton Drive
Capital Heights, MD 20743**

**Re: Notice of Inquiry
WC Docket No. 11-59**

Dear Sir or Madam:

Enclosed please find the Village of Scarsdale's reply to comments made by Next G Networks in response to the above referenced Notice of Inquiry. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Wayne D. Esannason

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Acceleration of Broadband Deployment
Expanding the Reach and Reducing the Cost
of Broadband Deployment by Improving
Policies Regarding Public Rights of Way and
Wireless Facilities Siting

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WC Docket No. 11-59

REPLY COMMENTS FROM THE VILLAGE OF SCARSDALE, NEW YORK

The Village of Scarsdale, New York files these reply comments to respond to the Commission's Notice of Inquiry ("NOI"),¹ and to address a false claim made against the Village of Scarsdale (hereinafter "the Village") by Next G Networks (hereinafter "Next G"). Next G falsely alleged that the Village required Next G to enter into a "revenue sharing" agreement in order to be situated in the Village's right-of-way.

BACKGROUND

On December 22, 2010, Next G filed preliminary plans to install sixteen (16) wireless units in the Village's right-of-way, which would comprise their Distributed Antenna System (DAS). From the onset, Next G argued that the Village's wireless telecommunications law did not apply to their application because they sought to be located in the Village's right-of-way. In other words, Next G believes that the Village's

¹ Notice of Inquiry, WC Docket No. 11-59, FCC 11-51 (Apr. 17, 2011) ("NOI").

wireless local law applies to all other areas of the Village, except the Village's right-of-way.

By letter dated February 3, 2011, the Village responded to Next G's preliminary application and outlined the necessary steps required to obtain Village approval as required by Next G's Certificate of Convenience and Necessity issued by the New York State Public Service Commission. In addition to outlining the approval process, the Village informed Next G that terms for compensating the Village should be agreed to and may include either a lump sum annual payment or a Gross Receipts Tax similar to what other utilities pay as required in §269 of the Scarsdale Village Code.

**I. NEXT G INTENTIONALLY MISCHARACTERIZED THEIR
NEGOTIATIONS WITH THE VILLAGE OF SCARSDALE**

Next G has falsely claimed to the FCC that as part of the their negotiations with the Village of Scarsdale they were required to enter into a revenue sharing agreement with the Village in order to have access to the Village's right-of-way. This assertion is a complete misrepresentation of the discussions and negotiations that the Village had with Next G.

In March 2011, the Village of Scarsdale began discussions and negotiations with Next G's legal representative, Peter Wise, Esq., DelBell Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601. During the discussions, the Village learned that the City of New Rochelle, an abutting community to the Village of Scarsdale, approved an agreement with Next G to install its facility in the city's right-of-way. To simplify and move matters forward, the Village informed Next G's counsel that the Village would entertain an agreement similar

to Next G's agreement with the City of New Rochelle, including the identical compensation for locating in their right-of-way. Next G's counsel forwarded a draft agreement based upon the City of New Rochelle Agreement from which the parties negotiated and agreed upon specific language changes. More important, the compensation sought in the proposed agreement was identical to the compensation agreed to by the City of New Rochelle and Next G. That compensation agreement required Next G to pay the City of New Rochelle a defined sum annually for the term of the agreement. It did not provide for any kind of "revenue sharing". Since the Village requested and negotiated a similar agreement to the City of New Rochelle, with identical compensation, Next G's claim that the Village required a revenue sharing agreement is a complete misrepresentation of the discussions and negotiations between the Village and Next G. Moreover, at no time did the Village suggest or require Next G to enter into a "revenue sharing" agreement with the Village.


II. THE VILLAGE HAS WORKED SUCCESSFULLY WITH WIRELESS TELECOMMUNICATIONS CARRIERS IN THE PAST

For more than ten years, the Village has worked successfully with several wireless telecommunications carriers, including but not limited to Sprint, Verizon, AT&T, and T-Mobile. Each of these telecommunications carriers have filed applications, entered into agreements with the Village and have obtained the appropriate land use approval to install and operate their wireless telecommunications facility. In fact, to date, every application to install a wireless telecommunications facility in the Village has been approved. As each of the aforementioned wireless telecommunications carriers have successfully complied with the Village's approval process, Next G must do the same.

CONCLUSION

The allegation that the Village required Next G to enter into a "revenue sharing" agreement is false. The Village has outlined its approval process for Next G and has proposed to accept the same level of compensation that Next G has agreed to pay an abutting community. The proposed level of compensation constituted an annual lump sum payment, not contingent upon the amount of revenue derived by Next G. While the basis for Next G's false allegation is unknown, such allegation raises serious questions with regard to their creditability and the integrity of their operations.

Respectfully submitted,



Wayne D. Esannason
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September 29, 2011